IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Smt. Chandi Bai and others.
vs.
Laxmi Lal.

S.B.CIVIL SECOND APPEAL NO.477/2006 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 24.7.2006 PASSED BY SHRI RAMCHANDRA SINGH JHALA, ADDITIONAL DISTRICT JUDGE, NO.3, UDAIPUR IN CIVIL APPEAL NO.23/2002.

DATE OF JUDGMENT ::: 17.4.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.Jitendra Chopra, for the appellants.
Ms.Rekha Borana, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

Earlier, the plaintiff filed suit no.145/1982 for eviction of his tenant on the ground of personal

bonafide necessity and default in payment of rent. In that suit, the trial court dismissed the suit of the plaintiff vide judgment and decree dated 21.11.1985. In the trial court, the rent was determined as required under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950'). Admitted rate of rent was Rs.175/- per month. The tenant since paid the rent as determined by the trial court and continued to pay the rent during pendency of the suit, the trial court, after declaring the defendant as defaulter but since it was a first default, therefore, gave benefit to the defendant and did not grant decree for eviction on the ground of default in payment of rent. However, in plaintiff's first appeal no.15/1987 the first appellate court decreed the suit of the plaintiff for part of rented premises vide judgment and decree dated 6.1.1989.

The tenant preferred second appeal against the appellate decree dated 6.1.1989 before this Court being S.B.Civil Second Appeal No.37/1989 wherein an order was passed by this Court directing the tenant to hand over the possession of the part of the property for which decree was passed by the first appellate court against the tenant. In that situation, the landlord got possession of part of premises from the tenant on 25.11.1989. The above second appeal no.37/1989 was

allowed by this Court vide judgment dated 6.11.2006. This court held that the first appellate court committed error of law in decreeing the suit of the plaintiff even for part of the premises. In view of the said finding, the suit of the plaintiff for eviction of the tenant for the entire premises stands dismissed including the premises for which the first appellate court granted decree and the plaintiff got possession of the said property from the tenant.

In that second appeal, substantial question of law was formulated with respect to the legal issue that "whether the first appellate court committed an error in not apportioning the rent of the suit shop after granting decree of ejectment in respect of the rooms ?"

For this substantial question of law, this Court held that "learned counsel for the appellant (tenant) could not point out any authority of law to substantiate the question, to show, that on the face of the language of Section 14(2), in the event of Court ordering partial eviction, the Court is under obligation to apportion the rent, for the portion allowed to be retained by the tenant."

The plaintiff, during the pendency of above S.B.Civil Second Appeal No.37/89 filed present suit for

eviction against the tenant on the ground of second default in payment of rent wherein the plaintiff alleged that the tenant did not pay rent from December, 1995 to the year 1997. The plaintiff in this suit claimed the rent at the rate of Rs.175/- per month for the entire period, including the period in which the part of the rented premises remained in possession of the plaintiff in pursuance of the decree of the first appellate court passed in plaintiff's earlier filed suit no.145/1982 and in view of the order of this court passed in second appeal no.37/1989.

The appellant/defendant submitted written statement and contested the claim of the plaintiff. According to the defendant, since the possession of part of the rented premises was taken over by the plaintiff on 25.11.1989 in pursuance of the order passed by this Court in second appeal, therefore, the plaintiff was entitled to only proportionate rent which according to the defendant was Rs.58/- per month. Meaning thereby, according to the defendant, the landlord recovered Rs.117/- per month in excess to the rent which was payable by the tenant to the landlord.

The defendant also submitted counter claim for fixation of standard rent and also prayed that the amount which has been recovered by the plaintiff in excess to the standard rent may be adjusted in future

rent.

It will be worthwhile to mention here that the defendant/tenant did not choose to file any suit for suspension of rent or apportionment of rent on the ground that he was deprived of the possession of the part of the rented premises. For that, there may be a reason that the defendant was evicted from part of the premises by the landlord in accordance with law. There may be another reason that the defendant/tenant was agitating the issue for apportionment of rent in the above S.B.Civil Second Appeal No.37/1989 and in that appeal, the tenant might have been hopeful of getting apportionment of rent from the time from which the defendant was deprived from the possession of the part of the rented premises.

Even, after dismissal of the second appeal by judgment dated 6.11.2006 with clear decision that the Court was not under obligation to pass the order for apportionment of rent when the Court passed the decree for eviction of the tenant from the part of the rented premises, the appellant/defendant did not choose to file any suit for apportionment of rent. The defendant raised the plea only in counter claim to the suit of the plaintiff which was filed by the plaintiff for eviction of tenant on the ground of second default, claiming rent of Rs.175/- per month from the tenant for

the entire premises as after dismissal of second appeal, the tenant got the possession of the part of the rented premises from the landlord which came in possession of the tenant in the circumstances mentioned above.

So far as decision of this Court delivered in S.B.Civil Second Appeal No.37/1989 that there is no provision in the Act of 1950 for passing order of apportionment of rent while passing the decree of partial eviction is concerned, that became final between the parties as the decision of this Court has not been challenged by any of the parties.

At this juncture, it may be observed that the Act of 1950 provides grounds for eviction of tenant as well as provides for provision when the rent can be increased or decreased by fixing standard rent and rest of the matter which are not covered under the provisions of the Act of 1950 and which are not in conflict with any provisions of the Act of 1950, tenancy is governed by the general law of tenancy and those are provisions under the Transfer of Property Act. In Rajasthan, the lis between the landlord and the tenant are not decided by specially constituted tribunals. The suits are civil suits and are decided by the Civil Courts having jurisdiction to try the civil

suit. While passing any decree, the civil court is only bound by the provisions made in the Act of 1950 and cannot pass decree for eviction of tenant unless the Court is satisfied with the grounds of eviction and further cannot allow the landlord to take more rent than the standard rent.

Be it as it may be as above, learned counsel for the respondent pointed out that in earlier round of litigation, there was no plea of the defendant that in case any decree for partial eviction is passed, then the Court should also pass the order for apportionment of rent under the Transfer of Property Act or as per the civil rights of the defendant which may entitle the defendant not to pay rent for the premises which is not in his occupation as tenant and for the portion of premises which has been delivered to the landlord.

Since there was no factual foundation also, therefore, the issue was not in fact raised in earlier round of litigation. The same is the position in the present litigation, as in the present suit, the defendant though filed a counter claim but did not choose to claim any relief for apportionment of rent or for suspension of rent because of the fact that the tenant was deprived of part of the premises may it be in pursuance of the Court's order.

If we go by the plea taken by the defendant in the counter claim, then even if the standard rent could

have been determined by the Court for the premises which remain in occupation of the tenant, then also as per Section 6(5) of the Act of 1950, the Court was required to appoint the date from which standard rent could have the effect. Proviso to Section 6(5) further provides that in case, the suit for fixation of standard rent is filed by the tenant after expiration of six months from the commencement of the Act of 1950, then that date can be from the date of institution of such suit or any later date. In that situation, the standard rent could have been fixed by the trial court from the date when counter claim was filed. That also cannot help the appellant tenant in as much as that the respondent prayed for fixation of standard rent by filing counter claim and before that tenant's defence was complete. Further the appellant/tenant himself has paid the rent at the rate of Rs.175/- per month since 25.11.1989 as he was paying before that date and continued to pay the rent at the rate of Rs.175/- per month even after he handed over possession of part premises to the plaintiff/respondent, then in that situation, the appellant/defendant himself accepted the rent of the premises as Rs.175/- per month even when he was not in occupation of the whole premises let out to him. The plea of adjustment of rent though was raised by the appellant but that plea has foundation of fixation of standard rent or apportionment of rent,

then cause of action for apportionment of rent accrued to the defendant/appellant from 25.11.1989 and the appellant could have filed the suit for same relief any time after 25.11.1989. Since the defendant himself accepted the rent of the part of premises as Rs.175/- for about 9 years, then his plea for apportionment of rent from the date prior to filing of his counter claim cannot be accepted.

Learned counsel for the respondent rightly pointed out that since the defendant himself nowhere pleaded that he paid the rent in time, then he now cannot say that he has paid the rent in time.

As a matter of fact, the two courts below have recorded finding of fact that the defendant has not paid the rent in time and, therefore, committed default.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya